

APPENDIX A

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CHART OF MOTION TO DISMISS PLAINTIFFS

Plaintiff	Residence	Age	Injuries Alleged	Medication
1. Aurecchia	Rhode Island	63	myocardial infarction	AndroGel
2. Marino	Missouri	50	transient ischemic attack	AndroGel
3. Myers	Texas	61	myocardial infarction	AndroGel
4. Cripe	Kansas	42	spinal cord infarction; paralysis	AndroGel
5. Johnson	New Mexico	61	myocardial infarction	AndroGel
6. Kelly Sr.	Pennsylvania	60	myocardial infarction	AndroGel
7. Gibby	North Carolina	61	pulmonary embolism, deep vein thrombosis	AndroGel
8. Hardee	Georgia	50	stroke	AndroGel
9. Lau	Florida	43	cerebrovascular accident	AndroGel, Axiron
10. Bartholic	Kansas	52	myocardial infarction	AndroGel
11. O'Donnell	Massachusetts	45	myocardial infarction	AndroGel
12. Blades	Wyoming	60	blood clots in lungs and legs; deep vein thrombosis	AndroGel
13. Carpenter	California	56	blood clots in lungs and legs; deep vein thrombosis	AndroGel
14. Humphries	Texas	46	blood clots in legs and arm	AndroGel
15. Dobbs	Indiana	42	deep vein thrombosis; pulmonary embolism	AndroGel
16. Headley	Colorado	54	deep vein thrombosis, pulmonary embolism	AndroGel
17. Hughes	Minnesota	57	blood clots in lungs	AndroGel
18. Jackson	Ohio	53	stroke, deep vein thrombosis	AndroGel
19. Gordon, M.	Arizona	56	blood clots, pulmonary embolism	AndroGel
20. Jones	New Hampshire	54	pulmonary embolisms	AndroGel
21. King	Oregon	39	blood clots in lungs and legs	AndroGel
22. Lewis	North Carolina	57	stroke	AndroGel
23. Saylor	Texas	54	pulmonary embolisms	AndroGel
24. Cataudella	Arizona	74	pulmonary embolism	AndroGel, Fortesta
25. Bailey	California	50	myocardial infarction	AndroGel
26. Gordon, J.	Ohio	63	myocardial infarction	AndroGel
27. White	New York	56	cerebrovascular accident	AndroGel
28. Montgomery	Michigan	60	cerebrovascular accident	AndroGel
29. Ortiz	California	52	stroke	AndroGel
30. DeLeon	New York	47	myocardial infarction	AndroGel
31. Dula	Georgia	49	myocardial infarctions	AndroGel
32. LaRoche	Texas		myocardial infarction; stenosis of the left carotid artery; coronary artery disease (resulting in death)	AndroGel
33. George	California	38	stroke	AndroGel
34. Lueck	Ohio	45	myocardial infarction (resulting in death)	AndroGel
35. Emmons	Rhode Island	46	myocardial infarction	AndroGel
36. Darby	Colorado	55	myocardial infarction	AndroGel
37. Parker	Nevada		myocardial infarction	AndroGel, Testim
38. DeForest	Tennessee	48	heart attack	AndroGel
39. Covey	Texas	57	deep vein thrombosis	AndroGel

APPENDIX B

APPENDIX B
ADDITIONAL AUTHORITY IN STATES SUBJECT TO MOTION TO DISMISS THAT
RECOGNIZE THE LEARNED INTERMEDIARY DOCTRINE

Arizona: *Dyer v. Best Pharmacal*, 577 P.2d 1084, 1088 (Ariz. App. 1978).

California: *Brown v. Superior Court*, 751 P.2d 470, 477 n. 9 (Cal. App. 1988).

Colorado: *O'Connell v. Biomet*, 250 P.3d 1278, 1280-83 (Colo. App. 2010).

Georgia: *McCombs v. Synthes*, 587 S.E.2d 594, 595-96 (Ga. 2003).

Florida: *Buckner v. Allergan Pharms.*, 400 So.2d 820, 822 (Fla. App. 1981).

Indiana: *Ingram v. Hook's Drugs, Inc.*, 476 N.E.2d 881, 887-88 (Ind. App. 1985).

Kansas: *Savina v. Sterling Drug*, 795 P.2d 915, 928-29 (Kan. 1990).

Massachusetts: *MacDonald v. Ortho Pharm. Corp.*, 475 N.E.2d 65, 68 (Ma. 1985).

Michigan: *Brown v. Drake-Willock Intern., Ltd.*, 530 N.W.2d 510, 516 (Mich. App. 1995).

Minnesota: *Mulder v. Parke Davis & Co.*, 181 N.W.2d 882, 885, fn.1 (Minn. 1970).

Missouri: *Janssen Pharmaceutica, Inc. v. Bailey*, 878 So.2d 31, 57 (Miss. 2004).

Nevada: *Klasch v. Walgreen Co.*, 264 P.3d 1155, 1159 (Nev. 2011).

New Hampshire: *McCue v. Norwich Pharmacal Co.*, 453 F.2d 1033, 1035 (1st Cir. 1972) (applying New Hampshire law).

New Mexico: *Serna v. Roche Labs*, 684 P.2d 1187, 1189 (N.M. App. 1984).

New York: *Spensieri v. Lasky*, 723 N.E.2d 544, 549 (N.Y. 1999).

North Carolina: N.C. Gen. Stat. § 99B-5(c) (1996); *see also In re Zyprexa*, 2010 WL 4052913 (E.D.N.Y.) (applying North Carolina law).

Ohio: *Howland v. Purdue Pharma L.P.*, 821 N.E.2d 141, 146 (Ohio 2004).

Oregon: *McEwen v. Ortho Pharm. Corp.*, 528 P.2d 522, 528-30 (Or. 1974); *Griffith v. Blatt*, 51 P.3d 1256, 1262 (Or. 2002).

Pennsylvania: *Creazzo v. Medtronic, Inc.*, 903 A.2d 24, 31-32 (Pa. Super. 2006).

Tennessee: *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 429 (Tenn. 1994).

Texas: *Centocor v. Hamilton*, 372 S.W.3d 140, 168-69 (Tex. 2012).

Wyoming: *Rohde v. Smiths Med.*, 165 P.3d 433, 436 n. 5 (Wyo. 2007).

APPENDIX C

APPENDIX C ADDITIONAL EXPRESS WARRANTY AUTHORITY

Arizona: *Gilmore v. DJO*, 663 F. Supp. 2d 856, 860 (D. Ariz. 2009) (dismissing breach of express warranty claim against device manufacturer where the allegations were “conclusory” and lacked “factual content”).

Florida: *Brady v. Medtronic, Inc.*, 2014 WL 1377830, at *8 (S.D. Fla. 2014) (dismissing claim for breach of express warranty in device case where plaintiff failed to allege “other than in a conclusory fashion” the specific express warranties made to him or his physician).

Georgia: *Grieco v. Tecumseh Prods.*, 2013 WL 5755436, at *7 (S.D. Ga.) (granting summary judgment to defendant on breach of express warranty claim where plaintiff alleged express warranty was created through oral statements, internet materials, and a written warranty but provided no evidence to support the allegations).

Indiana: *Ein v. Goodyear Tire & Rubber*, 173 F. Supp. 497, 499 (N.D. Ind. 1959) (dismissing claim for breach of express warranties, where, inter alia, “the alleged written promises and warranties [were] not set out in the complaint”).

Massachusetts: *Anthony’s Pier Four v. Crandall Dry Dock Engineers*, 489 N.E.2d 172, 175 (Mass. 1986) (to plead a claim for breach of express warranty, the plaintiff must allege “that the defendant promised a specific result.”); *Exum v. Stryker*, 2013 WL 3786469, at *3 (D. Mass.) (dismissing express warranty claim where the complaint “fail[ed] to specifically identify any particular affirmation made by Defendants”).

Michigan: *Fire Ins. Exchange v. Electrolux Home Prod. Lit.*, 2006 WL 2925286, at *9-10 (E.D. Mich.). (under Michigan law, where Plaintiff alleged breach of express warranty for failure to provide a safe product, granting motion for summary judgment because Plaintiff did not “describe where this description was found or how it was the basis of the bargain”).

Missouri: *In re Bisphenol-A (BPA) Polycarbonate Plastic Prods. Liab. Litg.*, 687 F. Supp. 2d 897, 904 (W.D. Mo. 2009) (under Missouri law, “Plaintiffs’ failure to identify any expressions made by Defendants to them about their products precludes any claim that an express warranty was made or violated.”); *In re GM Anti-Lock Brake Prod. Liab. Lit.*, 966 F. Supp. 1525, 1531 (E.D. Mo. 1997) (“express warranties must be explicit” and cannot be based on allegations of omissions from advertisements).

New York: *Horowitz v. Stryker Corp.*, 613 F. Supp. 2d 271, 286 (E.D.N.Y. 2009) (dismissing breach of express warranty claim alleged against artificial hip implant manufacturer where plaintiff failed to describe how representation that product was “safe” was made); *Lake v. Kardijan*, 874 N.Y.S.2d 751, 755 (N.Y. Sup. Ct. 2008) (“plaintiff has not identified any specific statements [by the device manufacturer defendant] which could constitute an express warranty, and has thereby failed to establish the existence of a claim...”).

Nevada: *Kwasniewski v. Sanofi-Aventis U.S.*, 2013 WL 2558283, at *2 (D. Nev.) (dismissing express warranty and other representation claims because “factual allegations relating to the content of these representations are entirely absent in the Complaint”).

North Carolina: *McCauley v. Hospira*, 2011 WL 3439145, at *6 (M.D.N.C.) (granting motion to dismiss under North Carolina law because “Plaintiff does not further address the alleged express warranty or its contents and does not address at all how the warranty was made, to whom it was made, or any other details with regard to the alleged warranty. This conclusory recitation of the elements of a breach of warranty claim is simply insufficient to state a claim for breach of express warranty”).

Ohio: *Smith v Hartz Mountain Corp.*, 2012 WL 5451726, at *4 (N.D. Ohio) (dismissing breach of express warranty claim in products case where, inter alia, plaintiffs failed to identify the specific language they allege constitutes a warranty).

Pennsylvania: *Luke v. Am. Home Prods.*, 1998 WL 1781624, at *6 (C.P. Phila.) (in case against pharmaceutical manufacturer, sustaining preliminary objection in the form of a demurrer against breach of express warranty claim because, among other deficiencies, plaintiff did not allege “what the warranty allegedly covered”); *VanScoyoc v. Gen. Foam*, 7 Pa. D. & C. 4th 621,627 (C.P. Blair 1990) (granting motion to strike breach of express warranty allegations for failure to plead sufficient facts, including, among other deficiencies, “the substance of the express warranties averred”).

Rhode Island: R.I. General Laws § 6A-2-313.